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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 SOUTHWIRE COMPANY, LLC

12 Plaintiff,

13 v.

14 HUGHES AUTOFORMERS, LLC,

15 Defendant.

16 HUGHES AUTOFORMERS, LLC,

17 Counterclaim Plaintiff,

18 v.
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20 SOUTHWIRE COMPANY, LLC

21 Counterclaim Defendant.
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Case No. 8:22-cv-1836- MCS (PDx)

**STIPULATED PROTECTIVE
ORDER**

Scheduling Conference: Apr. 17, 2023

1 **I. PURPOSES AND LIMITATIONS**

2 A. Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set
11 forth in Section XIII(C), below, that this Stipulated Protective Order does not
12 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
13 forth the procedures that must be followed and the standards that will be applied
14 when a party seeks permission from the Court to file material under seal.

15 **II. GOOD CAUSE STATEMENT**

16 A. This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of
24 third parties), information otherwise generally unavailable to the public, or which
25 may be privileged or otherwise protected from disclosure under state or federal
26 statutes, court rules, case decisions, or common law. Accordingly, to expedite
27 the flow of information, to facilitate the prompt resolution of disputes over
28 confidentiality of discovery materials, to adequately protect information the

parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

III. DEFINITIONS

A. Action: Case No. 8:22-cv-1836- MCS (PDx)

B. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

C. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

D. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

E. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

F. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

G. Expert: A person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

1 H. House Counsel: Attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 I. Non-Party: Any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 J. Outside Counsel of Record: Attorneys who are not employees of a party
7 to this Action but are retained to represent or advise a party to this Action and
8 have appeared in this Action on behalf of that party or are affiliated with a law
9 firm which has appeared on behalf of that party, and includes support staff.

10 K. Party: Any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staffs).

13 L. Producing Party: A Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 M. Professional Vendors: Persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 N. Protected Material: Any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE
21 COUNSEL ONLY”.

22 O. Receiving Party: A Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 P. “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”
25 Information or Items: sensitive technical, financial, competitive, or personnel
26 information, which is not generally known by third parties not under obligations
27 of confidentiality, and that the Producing Party would not normally reveal to third
28 parties without an agreement or expectation that the information would be

1 maintained in confidence, whether by agreements, policies, or procedures. This
 2 includes the following information and things that qualify for protection under
 3 Federal Rule of Civil Procedure 26(c), without limitation:

- 4 (i) information concerning research and development activities;
- 5 (ii) strategic business or marketing plans;
- 6 (iii) financial information, such as that which relates to expenses, costs,
- 7 profits, customer pricing or sales;
- 8 (iv) information concerning websites, systems, and products not yet
- 9 commercially or publicly available;
- 10 (v) information concerning licenses to patents or technology;
- 11 (vi) information concerning comparisons, studies, testing or evaluation
- 12 of competitor websites, systems, or products; and
- 13 (vii) information concerning customers, vendors, licensors, and
- 14 licensees.

15 **IV. SCOPE**

16 A. The protections conferred by this Stipulation and Order cover not only
 17 Protected Material (as defined above), but also (1) any information copied or
 18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 19 compilations of Protected Material; and (3) any testimony, conversations, or
 20 presentations by Parties or their Counsel that might reveal Protected Material.

21 B. Any use of Protected Material at trial shall be governed by the orders
 22 of the trial judge. This Order does not govern the use of Protected Material
 23 at trial.

24 **V. DURATION**

25 A. Even after final disposition of this litigation, the confidentiality
 26 obligations imposed by this Order shall remain in effect until a Designating Party
 27 agrees otherwise in writing or a court order otherwise directs. Final disposition
 28 shall be deemed to be the later of (1) dismissal of all claims and defenses in this

1 Action, with or without prejudice; and (2) final judgment herein after the
2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
3 of this Action, including the time limits for filing any motions or applications for
4 extension of time pursuant to applicable law.

5 **VI. DESIGNATING PROTECTED MATERIAL**

6 **A. Exercise of Restraint and Care in Designating Material for Protection**

7 1. Each Party or Non-Party that designates information or items for
8 protection under this Order must take care to limit any such designation to
9 specific material that qualifies under the appropriate standards. The
10 Designating Party must designate for protection only those parts of
11 material, documents, items, or oral or written communications that qualify
12 so that other portions of the material, documents, items, or
13 communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

15 2. Mass, indiscriminate, or routinized designations are prohibited.
16 Designations that are shown to be clearly unjustified or that have been made
17 for an improper purpose (e.g., to unnecessarily encumber the case development
18 process or to impose unnecessary expenses and burdens on other parties) may
19 expose the Designating Party to sanctions.

20 3. If it comes to a Designating Party's attention that information or items
21 that it designated for protection do not qualify for protection, that Designating
22 Party must promptly notify all other Parties that it is withdrawing the
23 inapplicable designation.

24 **B. Manner and Timing of Designations**

25 1. Except as otherwise provided in this Order (*see, e.g.*, Section
26 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
27 Discovery Material that qualifies for protection under this Order must be
28 clearly so designated before the material is disclosed or produced.

- 1 2. Designation in conformity with this Order requires the following:
- 2 a. For information in documentary form (e.g., paper or
- 3 electronic documents, but excluding transcripts of depositions or
- 4 other pretrial or trial proceedings), that the Producing Party affix at
- 5 a minimum, the legend “CONFIDENTIAL” or “HIGHLY
- 6 CONFIDENTIAL – OUTSIDE COUNSEL ONLY” (hereinafter
- 7 “Confidentiality Legend”), to each page that contains protected
- 8 material. If only a portion or portions of the material on a page
- 9 qualifies for protection, the Producing Party also must clearly
- 10 identify the protected portion(s) (e.g., by making appropriate
- 11 markings in the margins).
- 12 b. A Party or Non-Party that makes original documents available for
- 13 inspection need not designate them for protection until after the
- 14 inspecting Party has indicated which documents it would like copied and
- 15 produced. During the inspection and before the designation, all of the
- 16 material made available for inspection shall be deemed “HIGHLY
- 17 CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” After the
- 18 inspecting Party has identified the documents it wants copied and
- 19 produced, the Producing Party must determine which documents, or
- 20 portions thereof, qualify for protection under this Order. Then, before
- 21 producing the specified documents, the Producing Party must affix the
- 22 appropriate Confidentiality Legend to each page that contains
- 23 Protected Material. If only a portion or portions of the material on a
- 24 page qualifies for protection, the Producing Party also must clearly
- 25 identify the protected portion(s) (e.g., by making appropriate markings
- 26 in the margins).
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1 c. For testimony given in depositions, that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the
3 close of the deposition all protected testimony.

4 d. For information produced in form other than document and for
5 any other tangible items, that the Producing Party affix in a prominent
6 place on the exterior of the container or containers in which the
7 information is stored the appropriate Confidentiality Legend If only a
8 portion or portions of the information warrants protection, the
9 Producing Party, to the extent practicable, shall identify the protected
10 portion(s).

11 C. Inadvertent Failure to Designate

12 1. If timely corrected, an inadvertent failure to designate qualified
13 information or items does not, standing alone, waive the Designating
14 Party's right to secure protection under this Order for such material. Upon
15 timely correction of a designation, the Receiving Party must make
16 reasonable efforts to assure that the material is treated in accordance with
17 the provisions of this Order.

18 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 A. Timing of Challenges

20 1. Any party or Non-Party may challenge a designation of
21 confidentiality at any time that is consistent with the Court's Scheduling
22 Order.

23 B. Meet and Confer

24 1. The Challenging Party shall initiate the dispute resolution process
25 under Local Rule 37.1 et seq.

26 C. The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other

parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VIII. ACCESS TO AND USE OF PROTECTED MATERIAL

A. Basic Principles

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

2. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

B. Disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY" Information or Items

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

a. The Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

1 b. The officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably
3 necessary for this Action;

4 c. Experts (as defined in this Order) of the Receiving Party to
5 whom disclosure is reasonably necessary for this Action and who
6 have signed the “Acknowledgment and Agreement to Be Bound”
7 (Exhibit A);

8 d. The Court and its personnel;

9 e. Court reporters and their staff;

10 f. Professional jury or trial consultants, mock jurors, and
11 Professional Vendors to whom disclosure is reasonably necessary
12 for this Action and who have signed the “Acknowledgment and
13 Agreement to be Bound” attached as Exhibit A hereto;

14 g. The author or recipient of a document containing the
15 information or a custodian or other person who otherwise possessed
16 or knew the information;

17 h. During their depositions, witnesses, and attorneys for
18 witnesses, in the Action to whom disclosure is reasonably necessary
19 provided: (i) the deposing party requests that the witness sign the
20 “Acknowledgment and Agreement to Be Bound;” and (ii) they will
21 not be permitted to keep any confidential information unless they
22 sign the “Acknowledgment and Agreement to Be Bound,” unless
23 otherwise agreed by the Designating Party or ordered by the Court.
24 Pages of transcribed deposition testimony or exhibits to depositions
25 that reveal Protected Material may be separately bound by the court
26 reporter and may not be disclosed to anyone except as permitted
27 under this Stipulated Protective Order; and
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i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

2. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” only to individuals identified in §§ VIII.B.1.a and VIII.B.1.c-i.

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this
3 Action to disobey a lawful directive from another court.

4 **X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
5 **PRODUCED IN THIS LITIGATION**

6 A. The terms of this Order are applicable to information produced by a Non-
7 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – OUTSIDE COUNSEL ONLY”. Such information produced
9 by Non-Parties in connection with this litigation is protected by the remedies and
10 relief provided by this Order. Nothing in these provisions should be construed
11 as prohibiting a Non-Party from seeking additional protections.

12 B. In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party’s confidential information in its possession, and the Party
14 is subject to an agreement with the Non-Party not to produce the Non-Party’s
15 confidential information, then the Party shall:

- 16 1. Promptly notify in writing the Requesting Party and the Non-Party
17 that some or all of the information requested is subject to a confidentiality
18 agreement with a Non-Party;
- 19 2. Promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a
21 reasonably specific description of the information requested; and
- 22 3. Make the information requested available for inspection by the Non-
23 Party, if requested.

24 C. If the Non-Party fails to seek a protective order from this court within 14
25 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party’s confidential information responsive to the
27 discovery request. If the Non-Party timely seeks a protective order, the Receiving
28 Party shall not produce any information in its possession or control that is subject

1 to the confidentiality agreement with the Non-Party before a determination by
2 the court. Absent a court order to the contrary, the Non-Party shall bear the
3 burden and expense of seeking protection in this court of its Protected Material.

4 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately (1)
8 notify in writing the Designating Party of the unauthorized disclosures, (2) use
9 its best efforts to retrieve all unauthorized copies of the Protected Material, (3)
10 inform the person or persons to whom unauthorized disclosures were made of all
11 the terms of this Order, and (4) request such person or persons to execute the
12 “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit
13 A.

14 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 A. When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of
23 disclosure of a communication or information covered by the attorney-client
24 privilege or work product protection, the parties may incorporate their agreement
25 in the Stipulated Protective Order submitted to the Court.

26 **XIII. MISCELLANEOUS**

27 A. Right to Further Relief
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1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

D. Prosecution Bar

1. Any person who on behalf of Plaintiff reviews any document or information designated as Protected Material shall not participate in any way (including but not limited to participating in a supervisory capacity) in: (a) the prosecution or preparation of any application for patent, whether foreign or domestic, on behalf of any Party to this action (or any entity in privity with such Party) relating to the design, development, or manufacture of methods, systems, and/or components relating to computerized systems for and/or methods of presenting and synchronizing data in multiple portions of a computer display; (b) in any reexamination or reissue proceeding granted concerning any application or issued patent in such fields; or (c) advising any client or counsel concerning prosecuting

1 patent applications in such fields, from the time of receipt of such
2 information through and including two (2) years following the complete
3 termination of this action by either entry of a final, non-appealable
4 judgment or order, the complete settlement of all claims against all parties
5 in this action, or any other means. This prosecution restriction described in
6 this Paragraph is personal to the person receiving such Protected Material
7 and shall not be imputed to any other person or entity.

8 **XIV. FINAL DISPOSITION**

9 A. After the final disposition of this Action, as defined in Section V, within
10 sixty (60) days of a written request by the Designating Party, each Receiving
11 Party must return all Protected Material to the Producing Party or destroy such
12 material. As used in this subdivision, “all Protected Material” includes all copies,
13 abstracts, compilations, summaries, and any other format reproducing or
14 capturing any of the Protected Material. Whether the Protected Material is
15 returned or destroyed, the Receiving Party must submit a written certification to
16 the Producing Party (and, if not the same person or entity, to the Designating
17 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
18 all the Protected Material that was returned or destroyed and (2) affirms that the
19 Receiving Party has not retained any copies, abstracts, compilations, summaries
20 or any other format reproducing or capturing any of the Protected Material.
21 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
22 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
23 memoranda, correspondence, deposition and trial exhibits, expert reports,
24 attorney work product, and consultant and expert work product, even if such
25 materials contain Protected Material. Any such archival copies that contain or
26 constitute Protected Material remain subject to this Protective Order as set forth
27 in Section V.
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1 B. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.
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5 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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7 Dated: April 05, 2023



8 HONORABLE PATRICIA DONAHUE
9 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was
issue by the United States District Court for the Central District of California on
_____ [DATE] in the case of **Southwire Company, LLC v. Hughes
Autoformers, LLC, Case No. 8:22-cv-1836- MCS (PDx)**. I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____